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16

17 **UNITED STATES DISTRICT COURT**

18

DISTRICT OF NEVADA

19 Cung Le, Nathan Quarry, Jon Fitch, Brandon
Vera, Luis Javier Vazquez, and Kyle Kingsbury,
20 on behalf of themselves and all others similarly
situated,

21 Plaintiffs,
22 v.

23 Zuffa, LLC, d/b/a Ultimate Fighting
Championship and UFC,

24 Defendant.

25 No.: 2:15-cv-01045-RFB-(PAL)

26 **ZUFFA, LLC'S MOTION TO SEAL
PORTIONS OF PLAINTIFFS'
EMERGENCY MOTION TO
COMPEL PRODUCTION OF
DOCUMENTS WITHHELD ON
PRIVILEGE GROUNDS AND FOR
OTHER RELIEF (ECF NO. 443)**

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1 I. INTRODUCTION

2 Pursuant to the Stipulated Order governing the confidentiality of documents entered by the
 3 Court on February 10, 2016, ECF No. 217 (“Protective Order”) and Rule 26(c) of the Federal Rules
 4 of Civil Procedure, Defendant Zuffa, LLC (“Zuffa”) respectfully requests that the Court order the
 5 Clerk of Court to file under seal certain portions of Plaintiffs’ Emergency Motion To Compel
 6 Production of Documents Withheld on Privilege Grounds And For Other Relief (“Plaintiffs’
 7 Motion”) as well as exhibits, or certain portions thereof, associated with that motion as described
 8 below.¹ This Motion is accompanied by the Declaration of Stacey K. Grigsby in Support of Zuffa’s
 9 Motion to Seal Portions of Plaintiffs’ Motion (“Grigsby Sealing Declaration”).

10 The Protective Order in this case provides for the filing of documents under seal where a
 11 document or portions thereof contain Confidential or Highly Confidential Information. ECF No.
 12 217, ¶ 14.3. As described fully below, Zuffa seeks to file under seal four categories of information.
 13 First, Zuffa seeks to file under seal exhibits that contain excerpts from versions of Zuffa’s privilege
 14 log produced to Plaintiffs in this litigation. Second, Zuffa seeks to file under seal portions of
 15 exhibits consisting of correspondence between the parties that include excerpts of Zuffa documents
 16 that were properly designated confidential pursuant to the Protective Order. Third, Zuffa seeks to
 17 file under seal in their entirety documents produced to Plaintiffs that were properly designated as
 18 confidential pursuant to the Protective Order. Finally, Zuffa seeks to file under seal those portions of
 19 Plaintiffs’ Motion that refer to and quote from confidential of documents produced to Plaintiffs by
 20 Zuffa. For the reasons below, Zuffa has demonstrated that “good cause” exists sufficient to justify
 21 sealing of this non-dispositive motion and its related documents.

22 Zuffa takes no position on whether Exhibit 17 may be properly filed under seal.

23 II. LEGAL STANDARD

24 Documents filed in connection with a non-dispositive motion may be sealed if the party
 25 seeking to seal the documents makes a “particularized showing” under the “good cause” standard of
 26

27 1 All exhibits referenced in this Motion refer to exhibits to the Declaration of Kevin E. Rayhill in
 28 Support of Plaintiffs’ Emergency Motion to Compel Production of Documents Withheld on
 Privilege Grounds and for Other Relief (ECF No. 443).

1 Rule 26(c). *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (citation and
 2 internal quotation marks omitted); *see also Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 678 (9th
 3 Cir. 2010). The Court has “broad latitude” under Rule 26(c) “to prevent disclosure of materials for
 4 many types of information, including, but not limited to, trade secrets or other confidential research,
 5 development, or commercial information.” *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1211
 6 (9th Cir. 2002) (citations omitted).

7 As the Ninth Circuit has held, in granting protective orders preventing disclosure of certain
 8 types of information, district courts have, upon good cause shown, “[m]ost significantly . . . granted
 9 protective orders to protect confidential settlement agreements.” *Phillips ex rel. Estates of Byrd v.*
 10 *Gen. Motors Corp.*, 307 F.3d 1206, 1212 (9th Cir. 2002) (citations omitted).

11 III. ARGUMENT

12 A. Confidential Material Contained in Versions of Zuffa's Privilege Log Produced to
Plaintiffs

13 Exhibits 1, 4, and 7 to Plaintiffs' Motion consist in whole or in part of confidential materials
 14 contained in versions of Zuffa's privilege log produced to Plaintiffs. Such information can reveal
 15 confidential aspects of Zuffa's business, and requests to seal privilege logs are routinely granted.
 16 *See, e.g., Phillips v. C.R. Bard, Inc.*, 290 F.R.D. 615, 624 (D. Nev. 2013) (granting party's request to
 17 seal privilege log). Good cause therefore exists to seal exhibits 1 and 4 in their entirety, and to seal
 18 pages 4 through 8 of Exhibit 7.

19 B. Confidential Material Contained in Correspondence Between the Parties

20 Zuffa seeks to redact one portion of Exhibit 2, which contains an excerpt from confidential
 21 text messages exchanged by Zuffa executives Lorenzo Fertitta and Lawrence Epstein. Zuffa had
 22 previously designated the entire document from which these messages were excerpted as confidential
 23 pursuant to the Protective Order in this case. The text messages discuss an athlete compensation
 24 study, itself confidential, which Zuffa's counsel had commissioned. This Court previously sealed
 25 documents related to the same subject matter. *See* ECF No. 426. Good cause exists to seal this
 26 portion of Exhibit 2.

27 Zuffa seeks to redact one portion of Exhibit 5, which contains excerpts from confidential
 28

1 emails exchanged between Zuffa executives Michael Mersch and Lawrence Epstein and Zuffa's
 2 outside counsel, Donald Campbell. Zuffa had previously designed the entire document from which
 3 these portions were excerpted as confidential pursuant to the Protective Order in this case. The
 4 messages discuss Zuffa's and its counsel's confidential business opinions. Good cause exists to seal
 5 this portion of Exhibit 5.

6 C. Documents Produced to Plaintiffs by Zuffa That Were Properly Designated as
 7 Confidential

8 Exhibits 14, 15, 16, 18, 19, and 20 are all documents produced to Plaintiffs by Zuffa in
 9 during discovery that were properly designated as confidential. Exhibit 14 is an email from Zuffa's
 10 investment banker advisers requesting information related to Zuffa's acquisition history and its
 11 competitive monitoring of its rivals. Exhibit 15 discusses the particulars of a sponsorship
 12 opportunity. Exhibit 16 discusses competitively sensitive information regarding a Zuffa rival.
 13 Exhibit 18 is a memorandum from a management consulting firm to Zuffa's outside counsel
 14 detailing documents and information that would aid the consulting firm in its review of Zuffa's
 15 business. Exhibit 19 is an email chain between Zuffa executives and Zuffa's outside counsel
 16 discussing the details of the management consulting firm's review of Zuffa's business referenced
 17 above in Exhibit 18. Exhibit 20 is a an email chain between Zuffa's outside counsel and
 18 representatives of the management consulting firm that reference the purpose of the review for
 19 which the firm had been engaged. These documents were properly designated as confidential, and
 20 good cause exists to seal them in their entirety.

21 D. Portions of Plaintiffs' Motion Referencing Properly Sealed Materials

22 Finally, Zuffa requests that the Court permit the filing under seal one portion of Plaintiffs'
 23 Motion that quotes from Exhibit 7, which is properly filed under seal in its entirety. Zuffa requests
 24 that the Court seal those portions of page 4, lines 3 through 6 that were redacted in the public version
 25 of Plaintiffs' Motion.

26 IV. CONCLUSION

27 Zuffa respectfully requests that the Court find that Zuffa has made the requisite particularized
 28 showing of good cause sufficient to justify sealing of the documents, or portions thereof, listed

1 above.

2
3 Dated: July 5, 2017

Respectfully Submitted,

4 BOIES SCHILLER FLEXNER LLP

5
6 By: /s/ Stacey K. Grigsby

7 Stacey K. Grigsby

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **Zuffa, LLC's Motion to Seal Portions of Plaintiffs' Emergency Motion To Compel Production of Documents Withheld On Privilege Grounds And For Other Relief (ECF No. 443)** was served on July 5, 2017 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Catherine Duong